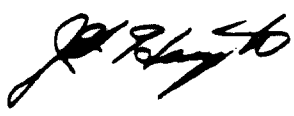
providers. When these policy concerns are combined with the formidable legal case for Commission jurisdiction, it is evident that the BOC *Ex Parte* should be given no weight.

In short, the Commission should exercise the plenary authority that these laws rightfully reserve to it to establish a uniform, federal framework for LEC-to-CMRS interconnection. When pressed in the future to read a new statute, moreover, Bell Atlantic and Pacific should keep in mind the words of the well-respected jurisprudential scholar, Karl Llewellyn, who said that: "if wishes were horses, then beggars would ride." The Commission should not give in to the wishful thinking of Bell Atlantic and Pacific, but should stand on the strong jurisdictional base provided to it for regulation of CMRS interconnection.

Respectfully submitted,



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THE CHANGING ROLE OF FCC JURISDICTION OVER MOBILE AND WIRELINE SERVICES

Comcast Corporation ("Comcast") submits this chart to demonstrate how the legislative developments in the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act of 1993") and the Telecommunications Act of 1996 ("TCA of 1996") have changed the Communications Act of 1934 (the "Act") to vest the Commission with exclusive jurisdiction over all rates regarding LEC-to-CMRS interconnection.

Statute/Case Law	Interstate	Intrastate
In 1914, the Supreme Court held in *Shreveport Rate Cases*[1] that the Interstate Commerce Commission ("ICC") had the power under the governing federal statute to order an increase in specific intrastate railroad rates charged to customers in order to avoid discrimination against interstate commerce.	The authority delegated by Congress to the ICC "extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance."[2]	States have no jurisdiction. The ICC has jurisdiction over intrastate railroad rates. "The powers conferred by the act are not thereby limited where interstate commerce itself is involved. This is plainly the case when the Commission finds that unjust discrimination against interstate trade arises from the relation of intrastate to interstate rates as maintained by a carrier subject to the act."[3]

The Communications Act of 1934 (the "Act") establishes dual regulatory framework.	Section 2(a) reserves to the FCC exclusive jurisdiction over interstate communications.	Section 2(b) reserves to the states jurisdiction over intrastate communications. When Congress was drafting the Communications Act, Section 2(b) was proposed and supported by state commissions "in reaction to what they perceived to be the evil of excessive federal regulation of intrastate service such as was sanctioned by the *Shreveport Rate Cases*[.]"[4/]
In 1964, the U.S. Court of Appeals for the D.C. Circuit ("Court of Appeals") held that a space research laboratory's local microwave communications facilities, although physically located entirely within one state, are jurisdictionally interstate when used to terminate spacecraft data communications primarily in interstate or foreign commerce.[5/]	The FCC has exclusive jurisdiction over physically intrastate facilities used to terminate communications in interstate or foreign commerce.	States do not have jurisdiction over physically intrastate facilities used to terminate communications in interstate or foreign commerce.
In 1980, the Second Circuit held that the charges for intrastate, distribution of interstate foreign exchange ("FX") and common control switching arrangement ("CCSA") services are jurisdictionally interstate.[6/]	The FCC has jurisdiction over all jurisdictionally interstate services: "The key to jurisdiction is the nature of the communication itself rather than the physical location of the technology."[7/]	The states lack jurisdiction over physically intrastate, but jurisdictionally interstate facilities and services.

In 1984, the Court of Appeals held that the FCC has authority to prohibit restrictions on resale of intrastate WATS services used to complete interstate communications.[8/]	The "dividing line between the regulatory jurisdictions of the FCC and the states depends on the 'nature of the communications which pass through the facilities [and not on] the physical location of the lines.'"[9/]	The states do not have jurisdiction over services that are jurisdictionally interstate in nature, even if physically intrastate.
In 1987, the Supreme Court held in *Louisiana PSC* that the Section 2(b) "fences off" intrastate depreciation rates from FCC jurisdiction. To preempt state regulation of such matters, the FCC must show that: (i) it is impossible to separate the intrastate and interstate portions of the subject to be regulated; and (ii) the state regulation conflicts with the valid federal goal.	Section 2(a) reserves to the Commission exclusive jurisdiction over interstate depreciation rates.	Section 2(b) reserves to the states jurisdiction over intrastate depreciation rates.
In 1987, the FCC finds pursuant to *Louisiana PSC* that it lacks jurisdiction over intrastate LEC-to-cellular interconnection rates and costs because they are severable from interstate LEC-to-cellular rates and costs.[10/]	The FCC has jurisdiction over LEC-to-cellular rates for interstate services.	The states have jurisdiction over LEC-to-cellular rates for intrastate services.

In 1993, Congress enacts the Budget Act of 1993, amending Sections 2(b) and 332 of the Act.	All CMRS is "federalized" by Section 332, which vests plenary authority in the FCC to implement the definition of, and level of Title II regulation applicable to, all CMRS providers. Section 332 also gives the Commission exclusive authority to hear state petitions to receive rate regulation authority. Section 332(c)(1)(B) authorizes the Commission to order physical interconnection between CMRS providers and LECs pursuant to Section 201. Section 201(a) authorizes the Commission to order all common carriers engaged in interstate or foreign communications by wire or radio to establish physical interconnections, upon reasonable request, and at just, reasonable and nondiscriminatory rates. LEC-to-CMRS interconnection is "federalized."	Section 2(b) is amended to except Section 332 from the general reservation of state jurisdictional authority. The states no longer have any jurisdiction over CMRS, or LEC-to-CMRS interconnection rates. The scope of federal authority reverts to the amplitude of pre-Section 2(b) *Shreveport Rate Cases.*

In 1996, Congress enacts the TCA of 1996. Section 251(d)(1) authorizes the FCC to complete all actions necessary to establish interconnection and access regulations. Section 251(d)(3) authorizes the FCC to preempt any state regulations that are inconsistent with FCC regulations or would substantially prevent implementation of the TCA's and the Commission's interconnection goals.	The FCC's authority over wireline services is expanded from jurisdictionally interstate services including Part 69 access to include regulation of formerly state services.	The states' jurisdiction over wireline services is reduced. Unlike *Louisiana PSC*, Section 251(d)(3) no longer requires that interstate and intrastate portions of a service be "inseverable" for the FCC to preempt state regulation. The FCC may preempt state interconnection regulations if they are inconsistent with the FCC's requirements *or* if they would substantially prevent implementation of the FCC's and the TCA's interconnection goals.

Section 253 of the TCA authorizes the Commission to preempt state and local laws that prohibit, or have the effect of prohibiting, the ability of any entity to provide interstate or intrastate telecommunications service.		Section 253 authorizes the FCC to preempt any state requirement inhibiting provision of interstate *or* intrastate telecommunications service.
Subsection 253(e) provides that "[n]othing in this section shall affect the application of section 332(c)(3) to commercial mobile service providers."	Federal preemption of state rate and entry authority over CMRS providers is preserved.	Section 332(c)(3) of the Budget Act already preempts state barriers to entry for CMRS providers, and the TCA does not disturb this legislative mandate.
Section 251(i) of the TCA makes clear that the new interconnection provisions "are in addition to, and in no way limit or affect, the Commission's existing authority under section 201 of the Communications Act."	The FCC's plenary authority over all LEC-to-CMRS interconnection under Sections 332(c)(1)(B) and 201(a) is preserved.	The Budget Act's elimination of state authority over "intrastate" components of LEC-to-CMRS interconnection is not affected by the TCA.
Section 601(c)(1) provides that the TCA "shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in [the TCA]".	The TCA must not be construed "impliedly" to repeal the Budget Act's grant of plenary jurisdiction over CMRS to the FCC.	The TCA must not be construed impliedly to reinstate state rate and entry authority over CMRS previously eliminated by the Budget Act.

1/ *See Houston, East & West Texas Railway Co. v. United States*, 234 U.S. 342, 24 S.Ct. 833, 58 L.Ed. 1341 (1914) ("*Shreveport Rate Cases*").

2/ 234 U.S. at 351.

3/ 234 U.S. at 358.

4/ *See Louisiana Public Serv. Comm'n v. FCC*, 476 U.S. 355, 372, 106 S.Ct. 1890, 1900 (1986) ("*Louisiana PSC*").

5/ *See California Interstate Tel. Co. v. FCC*, 1 Rad. Reg. 2d (P&F) 2095, 2099 (D.C. Cir. 1964); *California Interstate Tel. Co. v. Western Union Tel. Co.*, 1 Rad. Reg. 2d (P&F) 2081, 2082 (Calif. Pub. Util. Comm'n, 1963).

6/ *See New York Tel. Co. v. FCC*, 631 F.2d 1059 (1980).

7/ *See id.*, 631 F.2d at 1066 (citing *United States v. Southwestern Cable Co.*, 392 U.S. 157, 168-9, 88 S.Ct. 1994, 2000-2001 (1968); *General Tel. Co. v. FCC*, 413 F.2d 390, 401 (D.C. Cir.), *cert. denied*, 396 U.S. 888, 90 S.Ct. 173 (1969)).

8/ *See Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 746 F.2d 1492 (D.C. Cir. 1984).

9/ *See id.*, 746 F.2d at 1498 (quoting *California v. FCC*, 567 F.2d 84, 86 (D.C. Cir. 1977) (per curiam), *cert denied*, 434 U.S. 1010 (1978); *Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 738 F.2d 1095, 1114-5 (D.C. Cir. 1984); *Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198, 214-218 (D.C.Cir. 1982), *cert. denied*, 491 U.S. 938 (1983)).

10/ *See The Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Declaratory Ruling, 2 FCC Rcd 2910, 2912 (1987).